the words of the document, and the practical objections are reduced to a minimum. See 4 WIGMORE, EVIDENCE, § 2472. The ruling in the principal case would destroy a well-established rule of exclusion.

PHYSICIANS AND SURGEONS — NECESSITY OF PATIENT'S CONSENT TO OPERATION. — The plaintiff consented to be operated on by the defendant for a rupture in the left groin. After the patient was under the anæsthetic the defendant found in the right groin a rupture, dangerous to the plaintiff's life, and operated on that side instead of the other. The plaintiff brought suit for assault and battery. *Held*, that the plaintiff cannot recover. *Bennan* v. *Parsonnet*, 83 Atl. 948 (N. J.).

Ordinarily a surgeon is not justified in performing an operation more serious than the one expressly consented to. *Pratt* v. *Davis*, 224 Ill. 300, 79 N. E. 562. But when new conditions are found after the anæsthetic has been administered, making a different operation advisable, the public interest in the preservation of life and health gives weight to the argument that the surgeon should be allowed to use his discretion. In such a case it has been suggested that the patient impliedly consents to the different operation. See *Mohr* v. *Williams*, 95 Minn. 261, 269. A result of this view is seen in the suggestion by the court in the principal case that there is consent to operations similar to that authorized and no more serious. It would seem to be better to rest the justification directly on grounds of public policy rather than on the fiction of implied consent. Such a justification would be confined strictly to cases where the plaintiff's life was in immediate danger, and in all other cases he should be allowed to regain consciousness and given an opportunity to give or withhold actual consent.

POWERS — ATTEMPT TO EXERCISE A POWER CONTAINED IN THE WILL OF A LIVING TESTATOR. — A will provided that in case of a legatee's predecease, the legacy should go to whomever the legatee should appoint by will. The legatee predeceased the testatrix, leaving a will exercising the power. *Held*, that the power is not validly exercised. *In re Mayo's Will*, 136 N. Y. Supp. 1066 (N. Y., Sur. Ct.).

A power to dispose of property must be created by an instrument which would itself be sufficient to dispose of that property. *Clark* v. *Graham*, 6 Wheat. (U. S.) 577; *Williams* v. *Paine*, 169 U. S. 55, 18 Sup. Ct. 279. Since a will can only dispose of property at the testator's death, it cannot create a power until then. *Jones* v. *Southall*, 32 Beav. 31. The slight weight of authority holds invalid the exercise of a power by a will executed prior to its creation. *Matteson* v. *Goddard*, 17 R. I. 299, 21 Atl. 914. *Contra*, *Burkett* v. *Whittemore*, 36 S. C. 428, 15 S. E. 616. The opposite result is reached under the English Wills Act. *Boyes* v. *Cook*, 14 Ch. D. 53; *Airey* v. *Bower*, 12 A. C. 263. But invalidity of the exercise seems inevitable where, as in the principal case, the probate of the will precedes the power's creation, because the power cannot be exercised while inchoate. *Jones* v. *Southall*, *supra*. The decision is further supported by the fact that the donee of the power was dead at its creation and a statute limited the exercise of powers to persons capable of transferring property. N. Y. CONSOL. LAWS, 1909, c. 52, § 114. Nor can the intent of the testator be carried out without resort to the doctrine of powers, since it is an attempt in substance to incorporate by reference a non-existing document. A provision against the lapsing of a legacy by a power of appointment in the legatee is thus impossible.

RECEIVERS — POWER TO SUE IN A FOREIGN JURISDICTION. — A statute made receivers the assignees of the corporation's property. A receiver appointed under this statute brought suit in a foreign jurisdiction against a stockholder for an assessment levied on his stock by the court in which the receivership

proceedings were being carried on. The foreign jurisdiction refused to entertain the suit. *Held*, that the judgment be reversed. *Converse* v. *Hamilton*, 224 U. S. 243, 32 Sup. Ct. 415.

Ordinarily, a receiver is only an officer of the court which appoints him, and cannot sue in his official capacity except within the jurisdiction of that court. *Filkins* v. *Nunnemacher*, 81 Wis. 91, 51 N. W. 79; *Booth* v. *Clark*, 17 How. (U. S.) 322. The courts of some states will entertain suits by foreign receivers as a matter of comity. *Metzner* v. *Bauer*, 98 Ind. 425; *Hurd* v. *City of Elizabeth*, 41 N. J. L. 1. But if, by the laws of the state in which a corporation is being wound up, the receiver is vested with the legal title to the corporation's assets, he is then entitled to sue upon them in any state. *Relfe* v. *Rundle*, 103 U. S. 222. In such a case the receiver is more than an officer of the court, being invested with a legal title by the laws of one state which the courts of all other states are bound to respect under the full faith and credit clause of the Constitution. *Bernheimer* v. *Converse*, 206 U. S. 516, 27 Sup. Ct. 755; *Howarth* v. *Lombard*, 175 Mass. 570, 56 N. E. 888.

RECEIVERS — PROVABLE CLAIMS — EXECUTORY CONTRACTS. — The plaintiff company entered into an agreement with the defendant company by which the plaintiff was granted the exclusive right to carry express matter on the defendant's railway. The defendant company went into the hands of receivers who refused to adopt the agreement. *Held*, that the plaintiff can recover for breach of contract. *Pennsylvania Steel Co.* v. *New York City Ry. Co.*, "*Express Co.'s Appeal*," U. S., C. C. A., Second Circ. See NOTES, p. 72.

STATES — STATE RIGHT TO PRIORITY. — A state depository becoming insolvent, its surety paid the state the amount due. The surety then petitioned for the right of subrogation to the state's alleged priority over other creditors. A decree was granted sustaining the petition. *Held*, that such decree is error, as the state has no priority. *Potter* v. *Fidelity and Deposit Co.*, 58 So. 713 (Miss.).

In the few states where the common law alone governs the case, the slight weight of authority allows the state priority over the other creditors of an insolvent. *United States Fidelity and Guaranty Co.* v. *Rainey*, 120 Tenn. 357, 113 S. W. 397; *Seay* v. *Bank of Rome*, 66 Ga. 609. *Contra*, *State* v. *Harris*, 2 Bailey (S. C.) 598. In some jurisdictions it is held that an assignment for creditors or a transfer to a receiver in bankruptcy before the state presents its claim defeats the priority. *Maryland* v. *Bank of Maryland*, 6 Gill & J. (Md.) 205; *Maryland* v. *Williams*, 101 Md. 529, 61 Atl. 297. If priority is desirable, this rule seems to make it needlessly ineffective. *Seay* v. *Bank of Rome*, *supra*. The states which allow priority base their decisions on the grounds of a prerogative right derived from the common law of England. See *Maryland* v. *Bank of Maryland*, *supra*. The common law of England as adopted by most states would not be such binding authority as to warrant decisions not in accord with the principles underlying our form of government. *Board, etc. of Middlesex County* v. *State Bank*, 29 N. J. Eq. 268. But that such priority is neither contrary to these principles, nor undesirable, seems clear from the fact that in most states the legislatures have seen fit to pass statutes allowing this priority to the state. 2 MASS. REV. LAWS, c. 163, § 118; MINN. REV. LAWS, 1905, c. 90, § 4633.

TAXATION — PURPOSES FOR WHICH TAXES MAY BE LEVIED — GRATUITIES TO CIVIL WAR VETERANS. — A statute provided that "every resident Civil War veteran honorably discharged . . . shall be paid by the state as state aid the sum of $30 annually." *Held*, that the statute is unconstitutional. *Beach* v. *Bradstreet*, 82 Atl. 1030 (Conn.).

A proposed statute authorized a gratuity of $125 to every Civil War veteran